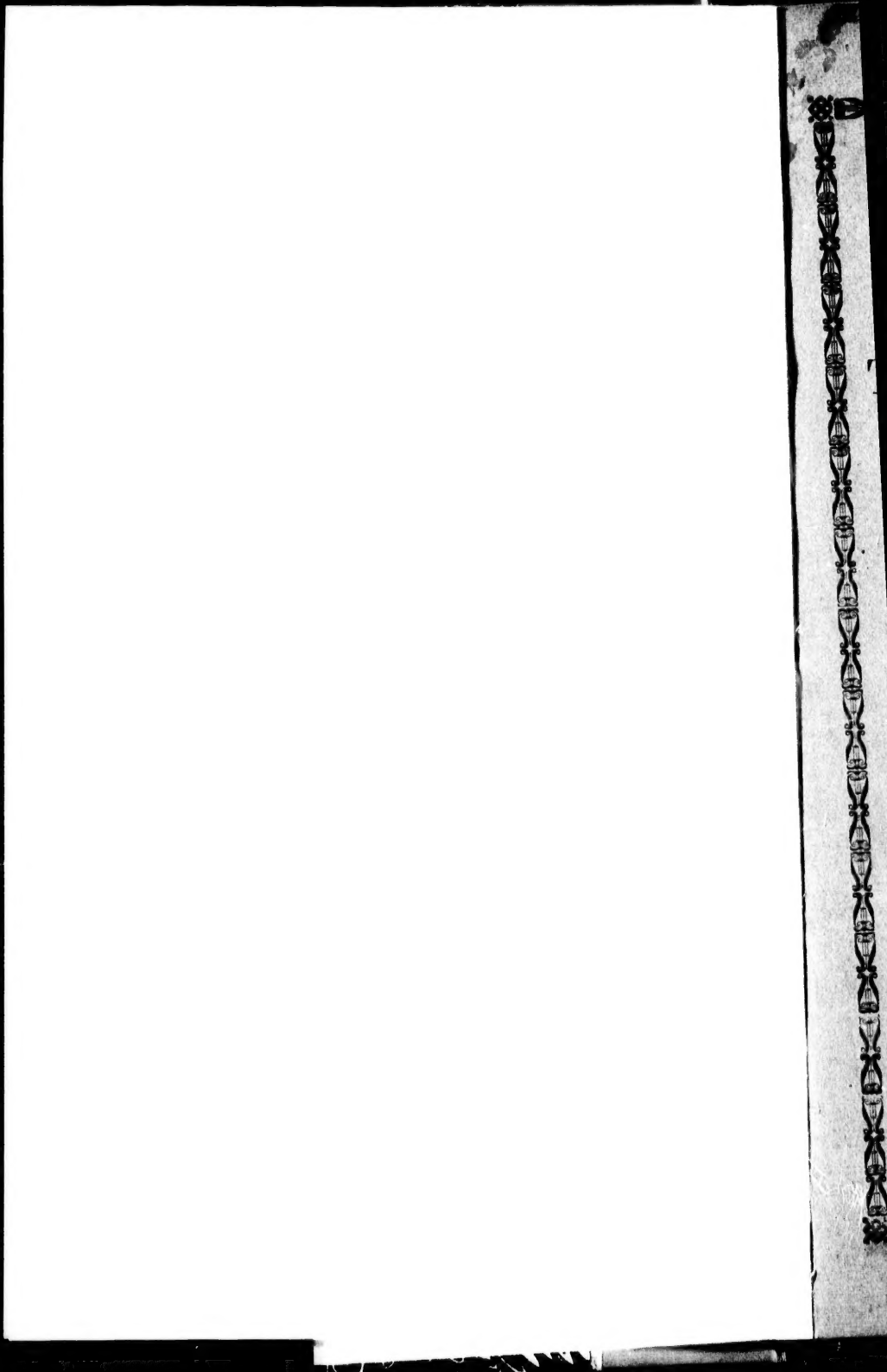




AN ACT
RESPECTING
THE SALE AND MANAGEMENT
OF THE
PUBLIC LANDS.

23 Vict. Cap. 2.



QUEBEC:
PRINTED BY STEWART DERBISHIRE & GEORGE DESHARATS,
Printer to the Queen's Most Excellent Majesty.
1860.

AN ACT

RESPECTING

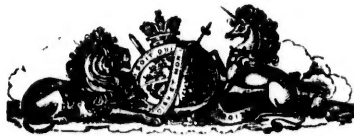
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PUBLIC ARCHIVES
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CAP. II.

An Act respecting the sale and management of the Public Lands.

[Assented to 23rd April, 1860.]

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

1. There shall continue to be and be a Department for the management and sale of the Public Lands and Forests, to be called "The Department of Crown Lands"; and the same shall be presided over by "The Commissioner of Crown Lands" for the time being. Department and Commissioner of Crown Lands.

2. There shall continue to be an "Assistant Commissioner of Crown Lands," who shall be appointed, from time to time as a vacancy occurs, by the Governor in Council--and shall perform such duties in the said Department as may be assigned to him by the Governor in Council or the Commissioner of Crown Lands, and shall preside over the Department and discharge therein the duties of the Commissioner of Crown Lands, in the absence of that officer or in the case of a vacancy in the Office of Commissioner, and shall, before entering on the duties of his office, take an oath faithfully to discharge the same, which oath shall be administered by the Commissioner of Crown Lands, or any person by the Governor for that purpose appointed. Assistant Commissioner of Crown Lands—his appointment, duties and oath of office.

COMMISSIONER AND OFFICERS OF DEPARTMENT.

3. The Department and Office of the Surveyor General of this Province shall continue to be consolidated with the Department and Office of the Commissioner of Crown Lands, under the superintendence and management of the last named Officer. Departments of Surveyor General and Commissioner of Crown Lands consolidated.

4. All the powers and duties which, before the seventeenth day of March, 1845, were assigned to or vested in the Surveyor General, shall be vested in the Commissioner of Crown Lands; Powers and duties of the

Surveyor General to be exercised and performed by the Commissioner of Crown Lands.

and the said powers and duties shall be exercised and performed by him, or by any Assistants or Clerks in his Department or Office, or by any person whom he, by an instrument in writing under his hand, authorizes to that effect, and under such name or designation of office as he may fix, as effectually as they might before the said day have been exercised or performed by the Surveyor General.

Governor may appoint officers and agents under this Act.

5. The Governor may, from time to time, appoint Officers and Agents to carry out this Act and Orders in Council under it, which Officers and Agents shall be paid in such manner and at such rates as the Governor in Council may direct.

Commissioner, Assistant Commissioner and Agents to give security. Proviso.

6. The Governor in Council shall require from the Commissioner of Crown Lands and from the Assistant Commissioner, and from every Agent appointed under him, security for the due performance of his duty; Provided that all securities given under any repealed Act shall nevertheless continue in full force.

Purchase, &c. by Agent of land, &c. in his agency to be void, and agent to forfeit his office and \$400.

7. No County or Resident Agent for the sale of Public Lands shall, within his division, directly or indirectly, unless under an Order of the Governor in Council, purchase any land which he is appointed to sell, or become proprietor of or interested in any such land, during the time of his Agency; and any such purchase or interest shall be void; and if any such Agent offends in the premises, he shall forfeit his office and the sum of four hundred dollars for every such offence, to be recovered in action of debt by any person who may sue for the same.

Commissioner to report annually to the Legislature.

8. The Commissioner of Crown Lands shall annually lay before the Legislature, and within ten days after the meeting thereof, a report of the proceedings, transactions and affairs of the Department during the year then next preceding.

EXTENT OF THIS ACT---ORDERS IN COUNCIL FOR CARRYING IT OUT.

Provisions of this Act may be extended to Indian Lands by Order in Council.

9. The Governor in Council may, from time to time, declare the provisions of this Act, or any of them, to apply to the Indian lands under the management of the Chief Superintendent of Indian affairs, or to the Jesuits' Estates, Crown Domain or Seignior of Lauzon; and the said Chief Superintendent of Indian affairs shall, in respect to the said Indian lands so declared to be subject to this Act, have the same powers as the Commissioner of Crown Lands has in respect to Crown Lands.

Governor in Council may make orders for carrying out this Act.

10. The Governor in Council may, from time to time, make such Orders as are necessary to carry out the provisions of this Act according to their obvious intent, or to meet cases which may arise and for which no provision is made by this

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Act;--and such Orders shall be published in the Official Gazette, and in such Newspapers as the Commissioner of Crown Lands may direct, and shall be laid before the Legislature within the first ten days of the Session next after the date thereof; But no such Order shall be inconsistent with this Act, save that the powers herein given to the Commissioner of Crown Lands may be exercised by the Governor in Council, and shall be subject to any Order in Council regulating or affecting the same from time to time.

Proviso.

FREE GRANTS LIMITED.

11. Except as hereinafter provided, no free grant of Public Land shall be made.

Free grants limited.

12. Any claim to land arising under any Act or under any Order in Council or other regulation of the Government heretofore in force, shall be determined by the Commissioner of Crown Lands, subject to such arrangement and order in respect to improvements on any particular lands as the Commissioner may think just; or the same may be satisfied by issuing to the party entitled, Land Scrip, or a certificate entitling him to purchase land to such an amount as the Commissioner of Crown Lands may find just; But no claim for land arising from Militia, United Empire Loyalist, or Military Rights, shall be entertained unless the same was actually located or admitted, or proof in support thereof sufficient in the opinion of the Commissioner of Crown Lands furnished, before the passing, on the fourteenth of June eighteen hundred and fifty-three, of the Act sixteenth Victoria, chapter one hundred and fifty-nine; and all land scrip or certificates entitling parties to purchase land issued prior to the passing of the said Act, shall be recognized and redeemed, in land or as payment for land; provided that such scrip and certificates be presented and established in the office of the Commissioner of Crown Lands before the first day of January, one thousand eight hundred and sixty-two.

Determination of claim arising under repealed Acts, Orders in Council, &c.

Proviso.

13. The Governor in Council may appropriate any Public Lands as free grants to actual settlers upon or in the vicinity of any Public Roads opened through the said Lands in any new settlements, under such regulations as shall from time to time be made by Order in Council; But no such free grant shall exceed one hundred acres.

Free grants may be made to settlers on or near roads in new settlements.

14. The Governor in Council may set apart and appropriate such of the Crown Lands as he deems expedient for the sites of Wharves or Piers, Market Places, Gaols, Court Houses, Public Parks or Gardens, Town Halls, Hospitals, Places of Public Worship, Burying Grounds, Schools, and for purposes of Agricultural Exhibitions, and for other like public purposes, and for Model or Industrial Farms; and at any time before the issue of Letters Patent therefor, may revoke such appropriation

Lands may be set apart for certain public purposes and free grants thereof made in trust.

Proviso.

as seems expedient;--and may make free grants for the purposes aforesaid, the trust and uses to which they are to be subject being expressed in the Letters Patent ;--But no such grant shall be for more than ten acres in any one instance and for any one of the purposes aforesaid ; except for a Model or Industrial Farm, which shall not exceed one hundred acres.

SALES AND LICENSES OF OCCUPATION AND ASSIGNMENT THEREOF.

Governor in Council may fix price &c., of lands.

15. The Governor in Council may, from time to time, fix the price per acre of the public lands, and the terms and conditions of sale and of settlement and payment.

Licenses of occupation to be issued to intending settlers—their effect.

16. The Commissioner of Crown Lands may issue, under his hand and seal, to any person who has purchased or may purchase or is permitted to occupy or has been entrusted with the care or protection of any public land, or who has received or been located on any public land as a free grant, an Instrument in the form of a License of Occupation ; and such person, or the assignee by an instrument registered under this or any former Act, providing for registration in such cases, may take possession of and occupy the land therein comprised, subject to the conditions of such License, and may thereunder, unless the same shall have been revoked or cancelled, maintain suits in law or equity against any wrongdoer or trespasser, as effectually as he could do under a Patent from the Crown ;--and such License of Occupation shall be *prima facie* evidence for the purpose of possession by such person, or the assignee under an instrument registered as aforesaid, in any such suit ; but the same shall have no force against a License to cut timber existing at the time of the granting thereof.

As to prior licenses to cut timber.

Licenses of occupation, certificates, receipts and location tickets heretofore issued to have the same effect.

17. Every License of occupation heretofore granted, and every certificate of sale or receipt for money received on the Sale of Public Lands, and every location ticket heretofore granted or made by the Commissioner of Crown Lands or any Agent of his, so long as the sale or grant to which such license of occupation, receipt, certificate, or location ticket relates is in force and not rescinded, shall have the same force, and shall enure to the benefit of the party to whom the same was granted, or to the assignee, by instrument registered as aforesaid, in the same manner and to the same extent as the Instrument in the form of a License of Occupation mentioned in the next preceding section.

Commissioner to keep a register of assignments of claims to lands ; on what proof entries shall be

18. The Commissioner of Crown Lands shall keep a book for registering (at the option of the parties interested) the particulars of any assignment made as well by the original nominee, purchaser or locatee or lessee of public lands or his heir or legal representative, as by any subsequent assignee of any such public lands or the heir or legal representative of such assignee ;--and

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upon such assignment being produced to the Commissioner, with an affidavit of due execution thereof, and of the time and place of such execution, and the names, residences and occupations of the witnesses, or as regards lands in Lower Canada upon the production of such assignment executed before Notaries, or before one Notary and two witnesses, or of a notarial copy thereof, the said Commissioner shall cause the material parts of every such assignment to be registered in such book of registry, and shall cause to be endorsed on every such assignment a Certificate of such registration, to be signed by himself or the Assistant Commissioner or any officer of the department by him authorized to sign such certificates;—And every such assignment so registered shall be valid against any one previously executed, but subsequently registered, or unregistered; but all assignments to be registered must be unconditional; and all the conditions of the sale, grant or location must have been complied with, or dispensed with by the Commissioner of Crown Lands, before such registration is made :

First regis-
tered assign-
ment to be
valid.

Proviso.

2. If any subscribing witness to any such assignment is deceased, or has left the Province, the said Commissioner may register such assignment upon the production of an affidavit proving the death or absence of such witness and his handwriting, or the handwriting of the party making such assignment.

On what proof
assignment
may be re-
gistered when
witness dead
or absent.

19. On any application for a Patent by the heir, assignee or devisee of the original nominee of the Crown, the Commissioner of Crown Lands may receive proof in such manner as he may direct and require in support of any claim for a Patent when the original nominee is dead, and upon being satisfied that the claim has been equitably and justly established, may allow the same and cause a patent to issue accordingly; But nothing in this section shall limit the right of the party claiming a Patent to make his application at any time to the Commissioners under the *Act respecting claims to Lands in Upper Canada for which no Patents have issued.*

Commissioner
may receive
proof in sup-
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Power to
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FORFEITURE OF CLAIMS, AND ENFORCEMENT OF FORFEITURE.

20. If the Commissioner of Crown Lands is satisfied that any purchaser, grantee or locatee or lessee of any Public Land, or any assignee claiming under or through him, has been guilty of any fraud or imposition, or has violated any of the conditions of sale, grant, location or lease, or of the License of Occupation, or if any such sale, grant, location or lease or License of Occupation has been or is made or issued in error or mistake, he may cancel such sale, grant, location, lease or license, and resume the land therein mentioned, and dispose of it as if no sale, grant, location or lease thereof had ever been made; and all such cancellations, heretofore made by

Sale, &c. of
land, may be
cancelled in
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ror—All such
cancellations
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the Governor in Council or the Commissioner of Crown Lands, shall continue until altered.

Mode of obtaining possession, if settler refuses to deliver up land on revocation of license, &c.

21. When any purchaser, lessee or other person refuses or neglects to deliver up possession of any land after revocation or cancellation of the sale, grant, location, lease or License of Occupation thereof as aforesaid, or when any person is wrongfully in possession of public land and refuses to vacate or abandon possession of the same, the Commissioner of Crown Lands may apply to the County Judge of the County, or to a Judge of the Superior Court in the Circuit, in which the land lies, for an Order in the nature of a Writ of *Habere facias possessionem*, or writ of possession, and the said Judge, upon proof to his satisfaction that the right or title of the party to hold such land has been revoked or cancelled as aforesaid, or that such person is wrongfully in possession of Public Land, shall grant an Order upon the purchaser, lessee or person in possession, to deliver up the same to the Commissioner of Crown Lands, or person by him authorized to receive the same; and such Order shall have the same force as a Writ of *Habere facias possessionem*, or writ of possession; and the Sheriff, or any Bailiff or person to whom the same may be entrusted for execution by the Commissioner of Crown Lands, shall execute the same in like manner as he would execute such Writ in an Action of Ejectment or Possessory Action:

Commissioner or his agent or other officer may issue distress warrant for rent of public lands in arrear.

Or action may be brought.

How notices required in respect of Crown Lands.

Powers of Commissioner as to Ordinance Lands transferred to the province.

2. Whenever any rent payable to the Crown on any lease of Public Lands is in arrear, the Commissioner of Crown Lands, or any Agent or Officer appointed under this Act and authorized by the Commissioner of Crown Lands to act in such cases, may issue a warrant, directed to any person or persons by him named therein, in the shape of a distress Warrant as in ordinary cases of Landlord and Tenant; and the same proceedings may be had thereon for the collection of such arrears as in the said last mentioned cases; or an action of debt as in ordinary cases of rent in arrear may be brought therefor in the name of the Commissioner of Crown Lands; but demand of rent shall not be necessary in any case;

3. When by law or by any deed, lease or agreement relating to any of the lands herein referred to, any notice is required to be given, or any Act to be done, by or on behalf of the Crown, such notice may be given and Act done by or by the authority of the Commissioner of Crown Lands; and the said Commissioner of Crown Lands may, in respect of the Ordinance lands, transferred to the Province, exercise all the powers which, before the transfer of said lands to the Province, were vested in the Principal Officers of Her Majesty's Ordinance prior to the passing of the Act 19, 20 V. c. 45.

PATENTS ISSUED IN ERROR.

Erroneous patents may be

22. Whenever a Patent has been issued to or in the name of the wrong party, through mistake in the Crown Lands De-

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partment, or contains any clerical error, or misnomer, or wrong description of the land thereby intended to be granted, the Commissioner of Crown Lands, (there being no adverse claim,) may direct the defective Patent to be cancelled and a correct one to be issued in its stead, which corrected Patent shall relate back to the date of the one so cancelled, and have the same effect as if issued at the date of such cancelled Patent.

23. In all cases in which grants or letters patent have been issued for the same land inconsistent with each other through error, and in all cases of sales or appropriations of the same land inconsistent with each other, the Commissioner of Crown Lands may, in cases of sale, cause a repayment of the purchase money, with interest, or when the land has passed from the original purchaser or has been improved before a discovery of the error, or when the original grant or appropriation was a free grant, he may in substitution assign land or grant a certificate entitling the party to purchase Crown Lands, of such value and to such extent as to him, the Commissioner of Crown Lands, may seem just and equitable under the circumstances; but no such claim shall be entertained unless it be preferred within five years from the discovery of the error.

In cases of double or inconsistent grants, the purchase money may be repaid with interest—or other land may be assigned—or a land certificate may be granted.

Proviso.

24. Whenever by reason of false survey or error in the books or plans in the Crown Lands Department, any grant, sale or appropriation of land is found to be deficient, or any parcel of land contains less than the quantity of land mentioned in the Patent therefor, the Commissioner of Crown Lands may order the purchase money of so much land as is deficient, with the interest thereon from the time of the application therefor, or if the land has passed from the original purchaser, then the purchase money which the claimant (provided he was ignorant of a deficiency at the time of his purchase) has paid for so much of the land as is deficient, with interest thereon from the time of the application therefor, to be paid to him in land or in money, as he, the Commissioner of Crown Lands, may direct, or in case of a free grant he may order a grant of other land equal in value to the land so intended as a free grant at the time such grant was made;—But no such claim shall be entertained unless application has been made within five years from the date of the Patent, nor unless the deficiency is equal to one tenth of the whole quantity described as being contained in the particular lot or parcel of land granted.

Compensation for deficiency of land by reason of false survey or error in departmental books or plans.

Proviso.

25. In all cases wherein Patents for lands have been issued through fraud or in error or improvidence, the Court of Chancery in Upper Canada, and the Superior Court in Lower Canada, may, upon action, bill or plaint, respecting such lands situate within their jurisdiction, and upon hearing of the parties interested, or upon default of the said parties after such notice of proceeding as the said Courts shall respectively

Courts may decree patents issued in error, &c., to be void; decree to be registered.

Practice in such cases.

Proceedings under former Acts may be continued under this.

Lists of public lands for sale to be published.

Lists of public lands sold to be transmitted yearly to Registrars, and to Secretary-Treasurers of municipalities in L. C. and notice of cancellation of sales, &c., to be given to them—effect as to taxes.

Lists of public lands patented to be sent to same yearly by Registrar of the Province.

Before whom affidavits under this Act may be made.

order, decree such Patents to be void ;---and upon a registry of such decree in the office of the Provincial Registrar, such Patents shall be void to all intents ; The practice in Court, in such cases, shall be regulated by orders to be from time to time made by the said Courts respectively ; and any action or proceeding commenced under any former Act may be continued under this section, which, for the purpose of any such action or proceeding, shall be construed as merely continuing the provisions of such former Act.

MISCELLANEOUS PROVISIONS.

26. The Commissioner of Crown Lands shall cause lists of the Public Lands for sale in the several Townships in Canada to be made out from time to time, and advertised or published as he deems most advisable for ensuring general information.

27. The Commissioner of Crown Lands shall transmit as early as possible in each year, to the Registrar of every County and Registration District or Division, and to the Secretary-Treasurer of every Municipality in Lower Canada, a list of the Public Lands sold, granted, leased or appropriated or set apart to any person or for which licenses of occupation have been granted in such County or Registration District or Division during the year next preceding and for which no Patents have issued, which said lands shall be liable to the assessed taxes in the Townships in which they respectively lie from the date of such sale or license or appropriation ; and the purchaser at the sale of any such lands for taxes shall, as heretofore, have in the lands so sold the same rights only as the person entitled to claim under the Crown at the time of such sale ; and the Commissioner of Crown Lands shall in like manner appraise each such Registrar and Secretary-Treasurer of the cancellation of any License of Occupation or Patent, or of any sale, grant, lease, location or appropriation ; from which time, until resold, leased or regranted, the land affected shall cease to be liable to taxes.

2. The Registrar of the Province shall transmit as early as possible in each year, to the Registrar of every County and Registration District and Division, and to the Secretary-Treasurer of every Municipality in Lower Canada, a list of the Public Lands patented during the year next preceding ; and no return of lands other than those hereinbefore mentioned need be made.

28. All Affidavits required under this Act, or intended to be used in reference to any claim, business or transaction in the Crown Lands Department, may be taken before the Judge or Clerk of any County or Circuit Court, or any Justice of the Peace, or any Commissioner for taking affidavits in any of the Courts, or the Commissioner of Crown Lands, or any Agent of the Commissioner of Crown Lands, or the Assistant Commissioner of Crown Lands, or any Surveyor duly licensed

and sworn to and submitted to the Provincial Court willful

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and sworn, appointed by the Commissioner of Crown Lands to enquire into or take evidence or report in any matter submitted or pending before such Commissioner, or if made out of the Province, before the Mayor or Chief Magistrate of, or the British Consul in any City, Town or other Municipality ; and any wilful false swearing in any such affidavit shall be perjury.

29. Whenever there is any gore or small tract of land or Island, which is not included in the original survey and description of any Township, and is of too limited extent to form a Township by itself,—the Governor may, by Proclamation, annex such gore or tract of land to any Township to which it is adjacent, or partly to one and partly to another of any two or more Townships to which it is adjacent, as he deems expedient ; and from and after the day appointed in such Proclamation, or from the date thereof, if no other day be therein appointed for the purpose, the tract of land thereby annexed to any Township shall form part thereof.

30. Copies of any records, documents, books or papers belonging to or deposited in the said Department, attested under the signature of the Commissioner, or of the Assistant Commissioner, shall be competent evidence in all cases in which the original records, documents, books or papers, could be evidence.

31. No person holding an office created by or continued under this Act (save in the case provided for in the seventh section) or employed in the Department, shall while holding such office or employment, directly or indirectly purchase any right, title or interest in any public land, or any land scrip, nor deal nor traffic in the same, either in his own right, or by the interposition of any other person, or in the name of any other person in trust for himself, nor shall take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office or employment ; And any person offending in the premises shall forfeit his office or employment, and be liable to a penalty of four hundred dollars, to be recovered in action of debt by any person suing for the same.

32. If any agent appointed or continued in office under this Act shall knowingly and falsely inform, or cause to be informed, any person applying to him to locate or purchase any land within his division and agency, that the same has already been located, assigned or purchased, or shall refuse to permit the person so applying to purchase the same, or, where entitled, to locate the same, according to existing Regulations, such agent shall be liable therefor to the person so applying in the sum of five dollars for each acre of land which the person so applying offered to locate or purchase, to be recovered by action of debt in any court of record having jurisdiction of the amount

Governor may, by proclamation, annex gores to adjacent townships.

Attested Copies of departmental records, &c., to be as evidence.

Employees of the Crown Land Department not to traffic in public lands or land scrip or take fees for official labor.

Penalty.

Penalty on agent knowingly giving false information, &c.

Hindering
 bidders at
 public sales
 of lands of
 the Province
 by intima-
 tion, &c.,
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 punished.

33. If any person or persons shall, before or at the time of the public sale of any of the lands of the Province, by intimidation, combination, or unfair management, hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any lands so offered for sale, every such offender, his, her, or their aiders and abettors, shall, for every such offence, be guilty of a misdemeanor, and on conviction thereof, shall be liable to a fine not exceeding four hundred dollars, or imprisonment for a term not exceeding two years, or both, in the discretion of the Court.

Patent or
 title of paten-
 tee or of any
 subsequent
 purchaser not
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 observance of
 certain con-
 ditions.

34. With a view to remove doubts, and to quiet the titles to certain lands heretofore granted, it is enacted, that the non observance and non fulfilment of the condition imposed in and by certain patents issued for public lands, of taking the oaths which may have been heretofore prescribed, in case of any subsequent sale, conveyance, enfeoffment or exchange, by the patentee, and of recording such oaths, within twelve months after having taken possession, in the office of the Secretary of the Province, or of performing certain settlement duties, shall not affect in any way the patent or title of any patentee, or of any subsequent purchaser or proprietor.

Doubts recit-
 ed.

35. Whereas doubts have been entertained as to the power vested in the Crown to dispose of and grant water lots, in the harbors, rivers and other navigable waters in Upper Canada, and it is desirable to set at rest any question which might arise in reference thereto, it is declared and enacted, that it has been heretofore and that it shall be hereafter lawful for the Governor in Council to authorize sales, or appropriations, of such water lots under such conditions as it has been or it may be deemed requisite to impose.

Sales and
 appropriat-
 ions of water
 lots declared
 to be legal.

Proceedings,
 under repea-
 led acts conti-
 nued—provi-
 sions of Act to
 apply to lands
 now under
 patent, &c.

36. All legal proceedings commenced in virtue of the Acts repealed shall be continued; and the rights acquired by virtue and under the Acts repealed shall be valid, and all orders in Council, and Regulations of the Department, and acts done thereunder, and appointments to office now in force or existing shall continue until altered or revoked, as if the said Acts had not been repealed; and all the provisions of this Act shall apply to lands under patent, grant, sale, location, lease or license of occupation at the time of the passing thereof, as well as to lands disposed of after the passing hereof.

Compensation
 under ss. 23
 and 24, to be
 personalty—
 Except, &c.

37. Compensation awarded under the twenty-third and twenty-fourth sections of this Act (except where land is specifically assigned therefor by the Commissioner of Crown Lands) and all claims therefor shall be treated as personal estate and dealt with accordingly.

Definition of
 the term

38. The term "Public Lands" shall be held to apply to lands heretofore designated or known as Crown Lands, School

Lands, Clergy Lands, Ordnance Lands, (transferred to the Province), which designations, for the purposes of administration, shall still continue. "Public Lands"

39. The twenty-second Chapter of the Consolidated Statutes of Canada is repealed. Chapter 22 of C. S. C. repealed.

QUEBEC :—Printed by S. DEBISHIRE & G. DESBARATS,
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